

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FRANK R. O'BRIEN JR.,)
O'BRIEN INDUSTRIAL HOLDINGS, LLC,)
)
)
PLAINTIFFS,)
)
)
vs.)
)
)
)
UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN SERVICES;) CASE NO. 4:12-cv-476
KATHLEEN SEBELIUS, in her official capacity)
as the Secretary of the United States Department)
of Health and Human Services;)
UNITED STATES DEPARTMENT OF)
THE TREASURY; TIMOTHY F. GEITHNER,)
in his official capacity as the Secretary of the)
United States Department of the Treasury;)
UNITED STATES DEPARTMENT OF LABOR;)
and HILDA L. SOLIS, in her official capacity as)
Secretary of the United States Department of Labor,)
)
DEFENDANTS.)
)

**PLAINITFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS
PURSUANT TO FED. RULES CIV. P. 12(b)(1) and 12 (b)(6)**

Pending before the Court is Defendants' Motion to Dismiss Plaintiffs' Complaint. (Doc. No. 14). Pursuant to Rule 15(a)(1)(B), plaintiff filed an Amended Complaint on June 11, 2012. (Doc. No. 19). "An amended complaint supersedes an original complaint and renders the original complaint without legal effect." *Bernard v. U.S. Dept. of the Interior*, 674 F. 3d 904, 909 (8th Cir. 2012), quoting *In re: Wireless Tel. Fed. Cost Recovery Fees Litig.* 396 F. 3d 922, 928 (8th Cir. 2005).

Accordingly, Defendants' Motion to Dismiss should be denied as moot.

Submitted this 12th day of June, 2012.

/s/ Francis J. Manion

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Attorneys for Plaintiffs

**Pro hac vice granted*

CERTIFICATE OF SERVICE

I, Francis J. Manion, plaintiffs' co-counsel, hereby certify that on June 12, 2012, a true and correct copy of the foregoing was caused to be filed electronically with this Court through the CM/ECF filing system. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's CM/ECF system. Parties may access this filing through the Court's CM/ECF system.

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**Pro hac vice granted*